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MELTON *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 291.]

1. **Criminal Law (§ 889\*)—Verdict Correcting Mistake in Penalty Held Invalid as Rendered after Discharge of Jury.**—Where the court told the jury after a verdict of guilty of rape that they were discharged, and the jurors thereupon returned to the jury room accompanied by the sheriff to claim attendance fees, but were thereafter recalled by the court upon discovery that the jury had made a mistake fixing the penalty under Code 1919, § 4414, and again retired and returned another verdict, such other verdict could not support a conviction, having been rendered after discharge.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 62.]

2. **Criminal Law (§ 889\*)—Inadvertent Announcement of Discharge of Jury May Be Recalled Only if Jury Has Not Left Presence of Court.**—So long as the whole jury are in the actual and visible presence of the court, and under its control, an inadvertent announcement of their discharge may be recalled as a matter still in the breast of the court, but, after they have left the court's presence, their functions as jurors have ended, and they cannot, either with or without the consent of the court, amend or alter their verdict.

Prentis, J., dissenting.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 62.]

Error to Circuit Court, Campbell County.

Ernest Melton was convicted of rape, and he brings error. Reversed and remanded.

*Duncan Drysdale* and *L. Bradford Waters*, both of Lynchburg, for plaintiff in error.

*John R. Saunders*, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

MOTLEY *v.* H. VICELLO & BRO. et al.

March 16, 1922.

[111 S. E. 295.]

1. **Courts (§ 99 (1)\*)—Decrees Establishing Lien Held Not Res Adjudicata of Validity Thereof on Petition for Rehearing by Other Lien Creditors.**—A decree annulling a deed of trust establishing a lien on the land and referring the cause to a commissioner to report

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.